

(1965) 07 AP CK 0009

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2406 of 1964

Akasam Peda Sanyasi and Others

APPELLANT

Vs

Sri Rajah K.V.G. Prabhakara Murthy

RESPONDENT

Date of Decision : 31-07-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 132(1)

Citation : AIR 1966 AP 222

Hon'ble Judges : P. Satyanarayana Raju, C.J

Bench : Single Bench

Advocate : M. Bhujangarao, for the Appellant; N.C.V. Ramanujachari, for the Respondent

Final Decision : Allowed

Judgement

P. Satyanarayana Raju, C.J.—This is a petition for revising the order of the Subordinate Judge of Kakinada directing that the plaintiff in O. S. No 29/1959 on his file be examined on commission. The suit was for the recovery of possession of lands on the basis of title. In the affidavit filed by the plaintiff in support of her application for issue of commission, she has stated that she belongs to the Telaga community and according to the custom obtaining among her people, she observes Gosha and that she does not attend Court. There is a further ground that she is suffering from an ailment which necessitates rest in bed. The defendant filed a counter affidavit denying the allegation made by the plaintiff. In paragraph 2 of the counter affidavit, the defendant specifically alleged as follows:

"The petitioner is almost daily coming to court in the afternoon in connection with her several litigations."

Mr. N.C.V. Ramanujachary, learned counsel for the plaintiff (respondent) has fairly conceded that this specific averment made by the defendant has not been denied in the reply affidavit. If it is possible for her to come in a car to the court compound, notwithstanding her supposed physical ailments, there is no reason

why she should have any difficulty in giving evidence in the chambers of the Judge. If she is almost daily coming to Court in connection with her several litigations, her request for being examined on commission cannot be granted.

2. As was pointed out by a Division Bench of the Madras High Court consisting of Rajamannar, Chief Justice and Viswanatha Sastri, J. in *Mohammad Ismail Maricair Vs. Wazir Bi Bi Saheba*, the court can refuse to grant the application of a woman who though she may belong to a community which observes *gosha* has herself abandoned the custom, to be examined on commission, when she is herself a party to the suit. In such a case, there is no question of the court compelling her to give evidence. If she wants to support her case, with her own evidence, there is no reason why she should be given the indulgence which she does not deserve. The learned Chief Justice in the same decision observed:

"The question still remains if there cannot be found some way to enable the trial Judge at least to listen to the evidence of such a person without infringing her right u/s 132(1) of the Code. Obviously, when such a person submits to an examination on commission, she also submits to appearance (though under a *pardah*) before the Commissioner appointed to take her evidence, counsel on either side and the parties, probably others instructing counsel. To this extent, it is clear that she is willing to give evidence before strangers. If so, I fail to see why she should refuse to give evidence outside her residence before the same persons as in a commission except that the trial Judge would take the place of the Commissioner. She cannot decline to be examined at any place other than of her own choice."

In another suit, the Subordinate Judge directed that the respondent should be examined in the chambers of the Judge, where every facility would be given to her to sit and depose. The general public can be shut out when the Judge is in chambers as effectively as, if not more, from her own residence. During the examination, except the trial Judge and officers of the Court and counsel of the parties, others would not be present. The order of the lower court is modified by directing the respondent to be examined in chambers of the Subordinate Judge where every possible facility should be given to her to sit and depose. If possible, her evidence may be recorded in the cooler part of the day, that is in the evening, and if there is a request by her, her evidence may be recorded in two or these sittings.

3. The revision petition is allowed as indicated above; but there will be no order as to costs.